

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Adam Ewert	Team: Team # 7	CCRB Case #: 200510629	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/06/2005 1:15 AM	Location of Incident: § 87(2)(b)	Precinct: 94	18 Mo. SOL 3/6/2007	EO SOL 3/6/2007	
Date/Time CV Reported Tue, 09/06/2005 1:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/09/2005 2:47 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Obrien	10453	930855	094 PCT
2. LT Jeffrey Brienza	00000	915056	094 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Guida	01516	932756	094 PCT
2. POM Carlos Naranjo	16400	916310	094 PCT
3. POM Jeffrey Brezinski	15003	915348	094 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Obrien	Discourtesy: PO Michael O'Brien spoke obscenely to § 87(2)(b)	
B.LT Jeffrey Brienza	Abuse: Lt. Jeffrey Brienza authorized the entry of § 87(2)(b) Brooklyn, NY 11221.	
C.LT Jeffrey Brienza	Force: Lt. Jeffrey Brienza authorized the use of physical force against § 87(2)(b)	
D.LT Jeffrey Brienza	Force: Lt. Jeffrey Brienza authorized the use of physical force against § 87(2)(b)	
E.LT Jeffrey Brienza	Force: Lt. Jeffrey Brienza authorized the use of physical force against § 87(2)(b)	
F. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon ethnicity.	

Synopsis

On September 6, 2005 at approximately 1:15 a.m., § 87(2)(b) arrived at his parents' apartment, located at § 87(2)(b), in Brooklyn. Someone banged on the door and § 87(2)(b)'s parents, § 87(2)(b) and § 87(2)(b) answered it. Lt. Jeffrey Brienza was at the door along with other officers. Lt. Brienza asked for § 87(2)(b) because someone called the police alleging that § 87(2)(b) harassed him and violated an order of protection. § 87(2)(b) refused to leave the apartment. He heard PO Michael O'Brien say, "Don't fucking go anywhere" (Allegation A). While § 87(2)(b) and his parents were talking to the officers at the doorway, Lt. Brienza attempted to grab § 87(2)(b)'s shirt. As a result, § 87(2)(b) retreated into the apartment and the officers followed (Allegation B). § 87(2)(b) stated that because § 87(2)(b) was standing in front of her, the officers pushed him first (Allegation C) when they entered. She heard Lt. Brienza order PO O'Brien to push her to the floor, which he did (Allegation D). All of the officers rushed into the apartment. § 87(2)(b) heard PO O'Brien say to § 87(2)(b) "Shut the fuck up, you little bitch" (Allegation A), and she saw PO O'Brien punch § 87(2)(b) in the face. § 87(2)(b) stated that many officers punched and kicked him (Allegation E) and an officer called him a "spic" (Allegation F).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

This case was reassigned to the undersigned investigator from Investigator Chiang on June 28, 2006.

Summary of Complaint

Civilian Statements

§ 87(2)(b) (Complainant/Victim)

According to § 87(2)(b)'s medical records, she was treated at § 87(2)(b) at 3:10 a.m. on September 6, 2006. The medical records indicate that § 87(2)(b) complained of pain "all over the body" after an altercation with police officers. The pain occurred after she was "pulled by the police by her right arm" and "pushed to ground" (enc. 13a-b).

§ 87(2)(b) made a complaint by phone with IAB on September 6, 2006 (enc. 7) and was interviewed at the CCRB on October 7, 2005 (enc. 13c-e). § 87(2)(b) is a § 87(2)(b)-old Hispanic female who is 5'2" and weighs 190 pounds. She has brown hair and blue eyes. The following is a composite of her statements. On September 6, 2006, her son, § 87(2)(b) got home around 12:00 a.m. and came upstairs quietly. Suddenly there was a banging on the door. § 87(2)(b) and her husband, § 87(2)(b) opened the door. An officer who was later identified during the investigation as Lt. Jeffrey Brienza and other officers were at the door. Lt. Brienza wanted to see § 87(2)(b) because someone called the police alleging that § 87(2)(b) harassed him despite an order of protection. § 87(2)(b) explained that her cousin § 87(2)(b) has orders of protection against § 87(2)(b). § 87(2)(b) stated that they were involved in a family dispute that stemmed from an

argument between § 87(2)(b)'s wife and § 87(2)(b) concerning a stove. The § 87(2)(b) family and the § 87(2)(b) family live in the same building.

§ 87(2)(b) refused to exit the apartment. § 87(2)(b) told the officers that they couldn't come in without a search warrant. Lt. Brienza said if § 87(2)(b) didn't come out, they were going to come in. He also said the officers did not have a search warrant and they did not need one. § 87(2)(b) was about to close the door but PO O'Brien put his foot on the door and said "either your son comes out or we're coming in." Because § 87(2)(b) was standing in front of § 87(2)(b) the officers pushed him first when they entered. Lt. Brienza then ordered PO O'Brien to "push her to the floor" and PO O'Brien came in and grabbed § 87(2)(b) by the shoulder and pushed her to the floor. She fell on her back. All of the officers then rushed into the apartment. Lt. Brienza and PO O'Brien came in first. Approximately ten officers followed. § 87(2)(b) saw PO O'Brien's name on his nametag.

After § 87(2)(b) got up from the floor she went outside and knocked on her cousin's door. § 87(2)(b) was feeling discomfort because she has heart problems and was feeling chest pain. She heard her son yell, "You already have my hands cuffed, please don't hit me no more." § 87(2)(b) walked back into the house and saw PO O'Brien kneeling over § 87(2)(b) who was lying on his side and handcuffed. PO O'Brien said, "Shut the fuck up, you little bitch" and he hit § 87(2)(b) five times in the face with a closed fist.

The officers removed § 87(2)(b) from the apartment and escorted him down the stairs. § 87(2)(b) did not see what happened to him after that. § 87(2)(b) went to § 87(2)(b) the same day after § 87(2)(b) was arrested because she had bruises on her back and swelling on her arm. Photographs of § 87(2)(b) and her arm were taken at the CCRB on October 7, 2005 (enc. 14).

§ 87(2)(b) (*Victim*)

§ 87(2)(b) was interviewed at the CCRB on October 7, 2005 (enc. 11). He is a § 87(2)(b) -old Hispanic male who is 5'9" and weighs 220 pounds. He has brown hair and blue eyes. On September 6, 2005 at approximately 1:15 a.m., § 87(2)(b) was at his parents' apartment at § 87(2)(b). § 87(2)(b) does not usually live there but was visiting from Connecticut where he has been trying to "get settled." He arrived in a cab after midnight and had been home twenty minutes when he heard banging on the door. Someone kept shouting, "come out." § 87(2)(b) did not interact with anyone besides his parents after arriving in the cab.

§ 87(2)(b) answered the door. § 87(2)(b) joined her husband, § 87(2)(b) at the door. A hallway connects the living room to the front door. There were several uniformed police officers outside. They asked, "Is your son home?" § 87(2)(b) made his presence known by standing in the hallway leading up to the front door and said he was there. An officer named PO O'Brien, who § 87(2)(b) identified from his nameplate, said, "Come outside." § 87(2)(b) refused to leave the apartment and demanded to see a search warrant. PO O'Brien said that they didn't need a search warrant and that they were going to get him somehow. PO O'Brien said that someone named § 87(2)(b) made a harassment complaint against § 87(2)(b). According to § 87(2)(b), § 87(2)(b) has filed four orders of protection against § 87(2)(b) claiming that he assaulted § 87(2)(b). The orders of protection stated that § 87(2)(b) cannot talk to § 87(2)(b) or his family but that § 87(2)(b) is allowed in the apartment building. There are cameras in the hallways of the apartment building and § 87(2)(b) believed that § 87(2)(b) must have seen him enter the building.

PO O'Brien said, "Either you come out or we're going in." § 87(2)(b) refused. There was a brief standoff. Finally § 87(2)(b) started to move away from the hallway to get a glass of water. PO O'Brien called out to § 87(2)(b) and said "Don't fucking go anywhere." § 87(2)(b) became upset because the officer called his name like he knew him. § 87(2)(b) moved closer to the door to tell his mother not to let the officer in and told the officers again that he wasn't stepping out.

Twenty or thirty officers rushed into the apartment. The officers had waited twenty minutes outside before they came in. Officers put § 87(2)(b) against the wall. A white male officer wearing a white shirt, who was later identified during the investigation as Lt. Jeffrey Brienza, grabbed § 87(2)(b)'s shirt. § 87(2)(b) "pushed back." § 87(2)(b) fell on the floor. § 87(2)(b) said an officer pushed § 87(2)(b) but he could not describe this officer. § 87(2)(b) then backed into the living room. Many officers started grabbing and restraining § 87(2)(b)s

arms. Beginning at this point, he did not have a clear idea what was happening. While he stood up and the officers were grabbing his arms, § 87(2)(b) felt punches on the face, stomach, and groin. He felt “more than a hundred hits.” § 87(2)(b) did not see any of these officers because his head was down. Officers kept telling § 87(2)(b) to get down. He said he was trying to get down and he was also trying to get the officers off of him. An officer got a handcuff on him. His knees buckled. An officer kicked § 87(2)(b) in the back. At this point § 87(2)(b) was on the floor. An officer kicked him “five times” in the head. When he was handcuffed face down on the floor, he looked up, saw PO O’Brien, and said, “Tell them to stop hitting me.” PO O’Brien said, “Shut the fuck up, you pussy” and punched him “like a dozen times” in the face. Blood came out of his nose. § 87(2)(b) had pictures of his injuries. One picture depicted redness behind his ear. Another picture depicted his back, which had multiple scratches. They were sustained when he was on his back and the officers were trying to restrain him. § 87(2)(b) did not provide pictures of his face because the injuries “didn’t look as severe.” A photograph of § 87(2)(b) was taken at the CCRB on October 7, 2005 (enc. 12b).

When the officers restrained § 87(2)(b) an officer called him a “spic” but he didn’t see which officer said it.

An officer dragged § 87(2)(b) out of the apartment. As they were going out of the building, the officer holding him by the cuffs also slammed him against the gate.

While in the holding cell at the 94th Precinct, § 87(2)(b) was having trouble breathing because he has asthma. Twenty minutes after § 87(2)(b) was taken to the stationhouse he was examined by an EMT. § 87(2)(b) did not go to the hospital.

§ 87(2)(b) (*Victim*)

§ 87(2)(b) was interviewed at the CCRB on October 7, 2005 (enc. 15). He is a § 87(2)(b)-old Hispanic male who is 6’1” and weighs 250 pounds. § 87(2)(b) stated that § 87(2)(b) called the police after seeing § 87(2)(b) in the hallway. There is a camera in the hallway. There was no contact between § 87(2)(b) and § 87(2)(b). At approximately 1:15 a.m., there was banging on the door. § 87(2)(b) had been home about two hours. § 87(2)(b) opened the door and saw a balding white male officer wearing a white shirt who was later identified as Lt. Jeffrey Brienza. There were “twenty” officers behind him. Lt. Brienza wanted § 87(2)(b) to step out. § 87(2)(b) went into view of the police officers and asked whether the police had a search warrant. Lt. Brienza said they just wanted to speak with him and that § 87(2)(b) made a complaint because he was assaulted by § 87(2)(b). § 87(2)(b) said this was a false complaint. § 87(2)(b) said he wasn’t coming out because he had no contact with § 87(2)(b). Lt. Brienza insisted that he come out of the apartment. Finally, Lt. Brienza said he wanted § 87(2)(b) to come out or “they were going to come in in force.” The officers were outside about ten to fifteen minutes before they came into the house. § 87(2)(b) and § 87(2)(b) were behind § 87(2)(b).

§ 87(2)(b) never went out and all of the officers rushed into the house. One of the officers pushed § 87(2)(b) against the wall. § 87(2)(b) could not describe this officer. He did not remember because many officers came in. When § 87(2)(b) was pushed against the wall he cut his leg on something. Officers approached § 87(2)(b) and “ten cops started beating him up” in the living room. Specifically, the officers “knocked him down” and tried to get § 87(2)(b)’s hands behind his back. § 87(2)(b) did not see § 87(2)(b) get knocked down. § 87(2)(b) kept saying “I didn’t do anything” and “leave me alone.” He was facedown and the officers were trying to handcuff him. § 87(2)(b) saw three or four officers punch § 87(2)(b) in the ribs and mouth in order to put the handcuffs on him. One of these officers was identified as PO Michael O’Brien. § 87(2)(b) knew this was PO O’Brien because he heard officers say “Mike, that’s enough” after PO O’Brien hit him. § 87(2)(b) also saw PO O’Brien’s nametag. § 87(2)(b) specifically saw PO O’Brien punch § 87(2)(b) in the face, ribs, and stomach. § 87(2)(b) was on the ground and PO O’Brien was kneeling beside him. He did not recall whether § 87(2)(b) was handcuffed at this point. Three or four officers were beside PO O’Brien.

Because so many officers entered the house and were trying to apprehend § 87(2)(b) they brushed against objects and knocked objects down in the house. § 87(2)(b) showed pictures depicting a messy living room and spilled paint in the hallway. Another picture depicted a scratch on

§ 87(2)(b)'s leg. He did not provide the pictures to the CCRB. Photographs of § 87(2)(b) and his leg were taken at the CCRB on October 7, 2005 (enc. 16).

Results of Investigation

Civilian Statements

§ 87(2)(b) (Witness)

§ 87(2)(b) provided several statements to the CCRB by phone (enc. 9 and 18a-b). The following is a composite of these statements, which were made on September 22, 2005 and October 4, 2006. During the night in question, the police officers arrested § 87(2)(b) on the § 87(2)(b) floor of § 87(2)(b)'s building. § 87(2)(b) heard the officers tell § 87(2)(b) "Get on the floor." He heard screaming and banging. § 87(2)(b) did not witness the arrest, although he saw § 87(2)(b) shove, elbow, and kick at police officers while they were bringing him down the stairs. § 87(2)(b) was handcuffed and he was swearing at the officers. The officers were telling him to calm down. § 87(2)(b) said that § 87(2)(b) has assaulted § 87(2)(b) and his mother in the past.

§ 87(2)(b) did not speak to the officers who came because he was too scared. § 87(2)(b) had an order of protection against § 87(2)(b) at the time of the incident. § 87(2)(b) called the officers to the building because § 87(2)(b) was making threats against him. When § 87(2)(b) came home after work earlier on the night of the incident, § 87(2)(b) was standing across the street and made threats against him. He was going to "get" § 87(2)(b). This happened in the late afternoon. § 87(2)(b) was fearful for his life and called the police when he went home.

§ 87(2)(b) was also making threats against a man upstairs. He and his wife (or girlfriend) have orders of protection against § 87(2)(b). When § 87(2)(b) went upstairs later that night, the wife or girlfriend called the police. § 87(2)(b) could not provide contact information for these people and he did not know if they still lived in his building.

§ 87(2)(b) (Witness)

§ 87(2)(b) contacted the CCRB by phone on September 22, 2005 (enc. 10). § 87(2)(b) did not witness the incident and lives on the § 87(2)(b) floor. § 87(2)(b) called the police on § 87(2)(b) because he violated an order of protection that her daughter, § 87(2)(b), has against § 87(2)(b) stemming from a dispute when § 87(2)(b) assaulted her. She did not know when this occurred. § 87(2)(b) is § 87(2)(b)'s second cousin. § 87(2)(b) saw § 87(2)(b) walking to the fifth floor on a security camera and called the police. The police spoke with her and said they would knock on the door if they see him, but they could not go inside the apartment. § 87(2)(b) did not know which officers she spoke with.

The officers went upstairs to get § 87(2)(b). § 87(2)(b) heard § 87(2)(b) saying to the police that they were violating his rights and that they would have to "beat" him up to get him to go with them. She heard officers tell § 87(2)(b) to get on the floor and stay still and she heard him refusing to do this. Her son, § 87(2)(b), who is § 87(2)(b)-old, saw the incident but she does not want him to be involved in this investigation. § 87(2)(b) also stated that § 87(2)(b) also has an order of protection against § 87(2)(b) because he threatened to kill § 87(2)(b) in the past. The day before this incident, § 87(2)(b) threatened § 87(2)(b) who then filed a police report because his order of protection was violated.

§ 87(2)(b) (Witness)

§ 87(2)(b) contacted the investigator by phone on October 4, 2006 (enc. 17). Her uncle, § 87(2)(b), heard § 87(2)(b) was in the building and he called the officers. Both she and § 87(2)(b) have orders of protection against § 87(2)(b) because he has assaulted them in the past. On the night of the incident, she saw through her peephole that § 87(2)(b) was entering the apartment. § 87(2)(b) spoke to the officer who responded and showed them her order of protection. The officers told § 87(2)(b) that they couldn't enter § 87(2)(b)'s apartment without a search warrant. When the

officers knocked on the apartment door, § 87(2)(b) opened the door. The officers were asking § 87(2)(b) to step outside the apartment. § 87(2)(b) screamed, "I'm not getting locked up for nobody. I didn't do anything wrong." The officers were explaining that there is an order of protection against him and that he is not supposed to be here. § 87(2)(b) stepped out and the officers started to handcuff him. He resisted and pushed the officers. An officer turned him around and tried to handcuff him. An officer was restraining § 87(2)(b) and he kept fighting with the officers in the hallway outside of the apartment. § 87(2)(b) watched what was happening because her door touches the § 87(2)(b)'s door in the hallway. Her uncle called 911 to report that an officer was in trouble.

§ 87(2)(b) went to the 94th Precinct later that night to file a report about the incident.

Attempts to Identify and Locate Additional Witnesses

There were no additional witnesses identified by the complainant, victims, or witnesses. The sprint print-out for this incident revealed that calls were made from the residence of § 87(2)(b). The call back number in the sprint report matched the contact number provided by § 87(2)(b) when the investigator contacted him by phone.

Identification of Subject Officers

§ 87(2)(b) and § 87(2)(b) identified PO Michael O'Brien as the officer who used discourteous language because they were able to see the nameplate on PO O'Brien's uniform. During his CCRB interview, PO O'Brien acknowledged using physical force against § 87(2)(b) during the incident. § 87(2)(b) also described a balding white male officer with a white shirt who stood in the doorway and attempted to grab § 87(2)(b) and pull him out of the apartment. The CCRB identified the officer as Lt. Jeffrey Brienza because he fit the general description provided by the victims and he acknowledged during his interview that he spoke to the § 87(2)(b) family before reaching for § 87(2)(b)'s shirt and entering the apartment. Furthermore, the investigation determined that he was the only officer present wearing a white shirt.

Officer Statements

Subject Lieutenant Jeffrey Brienza (Tax #915056)

A Line of Duty Injury Report (enc. 32) indicated that Lt. Jeffrey Brienza sustained an abrasion to his left elbow and a contusion to his left thigh as a result of struggling with § 87(2)(b).

Lt. Brienza was interviewed on August 11, 2006 (enc. 33). Lt. Brienza is a § 87(2)(b)-old white male who is 6' tall and weighs 205 pounds. He is bald and has hazel eyes. On September 6, 2005, Lt. Brienza was working as a platoon commander and assigned to marked police vehicle #1603. He was in uniform and was wearing a white shirt. In his memo book, he wrote, "0036 hours: 52 Family violation of an order of protection at § 87(2)(b), top floor. Sector assigned was 94 Charlie George. 0110 hours: 92 Charlie. Arrest made by PO O'Brien for a violation of an order of protection. After struggling with resisting perp, § 87(2)(b) parents of perp had blocked myself and other officers from apprehending perp in doorway. Not arrested due to my own discretion, even though they obstructed entrance to the apartment. § 87(2)(b) under arrest. 0121 hours. 83 processing paperwork" (enc. 31b). Lt. Brienza stated that "52 Family" refers to a family dispute.

Prior to the incident, Lt. Brienza received a radio run indicating that officers were needed at 65 North 8 Street. He was informed that the location has a history of violence against police officers. Lt. Brienza responded to the location and called sector Frank-Henry for back up. Upon arriving, Lt. Brienza met PO Michael Guida and PO Michael O'Brien outside the building and they stopped on the first floor to talk to the complainants, who each had an order of protection against § 87(2)(b). The complainant, a female, described how § 87(2)(b) had violated the order of protection. He could not remember if it was because of his presence or because he threatened her. Lt. Brienza said that an order of protection is violated if a perpetrator comes within a certain vicinity of the individual or their residence or

their place of work. This is also the case with specific conduct, such as harassment. The perpetrator then has to be arrested because he or she has violated a court order.

After viewing the order of protection, Lt. Brienza then went upstairs with PO Guida and PO O'Brien and knocked on § 87(2)(b)'s apartment door. A father figure who was identified during the investigation as § 87(2)(b) answered the door and he asked the officers a lot of questions. During this time, PO Jeffrey Brezinski and PO Carlos Naranjo joined the officers. While talking to § 87(2)(b) Lt. Brienza determined that § 87(2)(b) was in the apartment at the time. The mother, later identified as § 87(2)(b) Gonzales also came to the door and talked to Lt. Brienza. At this time, § 87(2)(b) was visible to the officers and he was identified by his parents. He seemed to be agitated and was pacing around, going in and out of sight at the end of the hallway. Lt. Brienza was calling for him to come back because he feared for his safety. There was twenty minutes of dialogue between the officers and the parents. Lt. Brienza informed the family that it is a felony to violate an order of protection and § 87(2)(b) has to be arrested. § 87(2)(b) stated he would not come with the officers and that they could not take him. He threatened to punch Lt. Brienza in the face. The parents were also defending their son and did not want the officers to enter. They said the complainant was lying in this case.

Lt. Brienza saw a gap in the doorway when § 87(2)(b) moved slightly. Lt. Brienza put his left shoulder into the opening between the § 87(2)(b) and § 87(2)(b) and stepped through into the apartment. Lt. Brienza lunged and grabbed § 87(2)(b)'s tank top. § 87(2)(b) pulled back and the top tank stayed in Lt. Brienza's hand. § 87(2)(b) retreated into the apartment, and Lt. Brienza followed him because he wanted to make sure § 87(2)(b) did not furnish himself with a weapon. Furthermore, if he did not enter the apartment, § 87(2)(b) could escape or commit further violence. Lt. Brienza went around § 87(2)(b) and passed her to another officer, possibly PO O'Brien. He did not see what happened to the parents at this time. When he reached § 87(2)(b) Lt. Brienza put his hand on the back of the head and forced him down. The other officers were helping him and Lt. Brienza did not remember who first touched § 87(2)(b) there were several pairs of hands grabbing § 87(2)(b). He was actively resisting and his arms were flailing.

§ 87(2)(b) kept retreating and went into a room that was under construction; there were plywood floors and nuts, bolts, and screws strewn about. There was also an open window, which made Lt. Brienza fear for his safety. He attempted to force § 87(2)(b) back to the center of the room, at which time the other officers present helped out and wrestled § 87(2)(b) to the floor. They were trying to get him to the floor so that he would stop moving. The officers struggled with him until they rear-cuffed him. § 87(2)(b) had to be physically restrained in order to be handcuffed. Lt. Brienza could not remember which officers did this. Lt. Brienza remembered either holding § 87(2)(b) down or holding his arm. § 87(2)(b) was held face down and the officers were putting his hands behind his back. He was squirming and attempting to strike the officers. This took a few minutes, possibly up to five minutes. During the struggle, § 87(2)(b) was standing and watching nearby.

After gaining control of § 87(2)(b) he was placed under arrest and taken out of the building. Around this time, Lt. Brienza approached § 87(2)(b) who watched the arrest take place. Lt. Brienza explained the situation and the arrest. § 87(2)(b) asked for the officers' information, which Lt. Brienza gave to him at the scene. Shortly before Lt. Brienza left the apartment, an officer told Lt. Brienza that § 87(2)(b)'s mother was having chest pains. An ambulance was called to the location by one of the officers present and EMS checked § 87(2)(b) outside of the building. Lt. Brienza remembered that § 87(2)(b) did have injuries, but he could not remember what they were. § 87(2)(b) was transported to the precinct, where he was again looked at by EMS.

When Lt. Brienza exited the building, he saw many officers from the 90th and the 94th Precinct. Lt. Brienza explained to the officers that they would not be taking the parents for obstructing government administration due to his discretion. EMS was then escorted into the building. The parents refused treatment.

Several officers were injured. Lt. Brienza was injured on his left elbow and left thigh when he went to the ground with § 87(2)(b). PO Guida and PO O'Brien were also injured during the struggle but Lt. Brienza did not elaborate.

Lt. Brienza did not recall any officers saying "Don't fucking go anywhere," to § 87(2)(b) and nobody said they would enter the apartment by using force. Lt. Brienza did not see § 87(2)(b)'s parents pushed to the ground by the officers. The officers did not push § 87(2)(b) to the ground, but they wrestled him to the ground. Lt. Brienza did not recall if any officers punched or kicked § 87(2)(b) in the head, back, stomach, ribs, or groin. He also did not recall that any officers said, "Shut the fuck up, you

pussy” or “you little bitch.” Lt. Brienza did not remember if any officer called anyone a “spic.” The other officers at the scene brought § 87(2)(b) to the RMP, and Lt. Brienza did not know if they struggled with him.

Subject Officer Michael O’Brien (Tax #930855)

A Line of Duty Injury Report indicated that PO Michael O’Brien sustained a strained back and a bruised right hand and knee as a result of struggling with § 87(2)(b). He also witnessed Lt. Brienza and PO Guida sustain injuries while assisting officers subdue § 87(2)(b) (enc. 21a-c).

PO O’Brien was interviewed on January 18, 2006 (enc. 21). He is a § 87(2)(b)-old white male who is 5’11”, weighs 200 pounds, and has brown hair and blue eyes. On September 6, 2005 PO O’Brien was working with PO Michael Guida in patrol sector CG in police car #2303. While on patrol they received a 10-10 radio call (violation of order of protection) at the location. They responded to the location and spoke with the complainants § 87(2)(b) and § 87(2)(b) on the first floor. The complainants stated that on September 1 and September 2, § 87(2)(b) had threatened to “beat them up” and cause serious physical injury, thus violating the order of protection. They filed complaint reports with the 94th Precinct detective squad. They were informed by the squad that if they ever saw him enter the building again to call the police. The complainants told PO O’Brien that § 87(2)(b) was in apartment 12. While speaking with the complainants, they were joined by Lt. Jeffrey Brienza, PO Carlos Naranjo, and PO Jeffrey Brezinski. They presented the officers with a valid copy of the order of protection.

The five officers went upstairs to § 87(2)(b). PO O’Brien knocked on the door. § 87(2)(b) and § 87(2)(b) answered. PO O’Brien asked if § 87(2)(b) was home. § 87(2)(b) came into the hallway of the apartment and said “Yes, what do you want from me?” The officers explained that he violated an order of protection and he has to go with the police. § 87(2)(b) said he was not going anywhere. § 87(2)(b) also said § 87(2)(b) was not going anywhere. The officers asked again for § 87(2)(b) to step out into the hallway. § 87(2)(b) said the officers had no right to enter because they did not have a warrant. PO O’Brien explained to the CCRB that a warrant was not necessary in the case because they were not searching the building, they had § 87(2)(b) in plain sight and there were open complaints for his arrest. PO O’Brien stated that at that point the officers were “mandated” to arrest § 87(2)(b). The police representative said the violation of the order of protection is sufficient to enter at that point. The officers explained to the § 87(2)(b) family that there were open complaints against § 87(2)(b) and if necessary the officers will enter. This conversation lasted for ten minutes in an attempt to get him to come out. § 87(2)(b) stated to Lt. Brienza that he would punch whoever entered the apartment. § 87(2)(b) asked for everyone’s name and shield number. The officers allowed him to get a pen and paper to write down their names in an attempt to calm the situation. The officers told § 87(2)(b) again to come out and he refused. PO O’Brien stated that he and PO Guida made the decision to enter. The officers entered and the parents “put up resistance” by not letting the officers enter. The mother pushed and shoved at the officers to keep them from entering the apartment so the officers “knocked her to the side.” § 87(2)(b) stepped aside.

PO O’Brien grabbed § 87(2)(b) in the hallway and a “fight” went on from the hallway into the kitchen. § 87(2)(b) was kicking, pushing and shoving, causing PO O’Brien to bang into the wall bruising his lower back. § 87(2)(b) was also throwing punches and the officers were “banging into the walls back and forth.” There was a lot of tussling. § 87(2)(b) shoved PO O’Brien and other officers in the kitchen as well causing items to fall on the floor. The officers subdued him in the kitchen. It took all five officers to subdue § 87(2)(b). It took what felt like five minutes to subdue him. § 87(2)(b) was extremely angry and was larger than PO O’Brien. After the officers had tackled § 87(2)(b) to the floor, PO O’Brien “swung on him with a closed fist”, striking him in the body. He did not recall how many times he struck him. PO O’Brien struck him to get him to stop resisting arrest. PO O’Brien also sustained a cut to the chin and bruises to his hand and knee, but he didn’t know how he sustained these injuries. The officers were able to handcuff § 87(2)(b). The officers yelled continually for him to stop resisting and put his hands behind his back. PO O’Brien did not know whether the other officers struck him. PO O’Brien denied using profanity or foul language.

The officers escorted § 87(2)(b) to the street. While going down the staircase, § 87(2)(b) threw his body from side to side but the officers were able to safely escort him down. PO O’Brien denied slamming § 87(2)(b) against the wall after he was handcuffed. They offered him

medical attention after placing him in the car but he refused. PO O'Brien asked if he needed medical attention because PO O'Brien felt injured and he assumed § 87(2)(b) was injured as well. There was redness on § 87(2)(b)'s body. They transported him to the stationhouse where they offered him medical attention again but he refused.

Witness Officers Michael Guida (Tax #932756), Carlos Naranjo (Tax #916310), and Jeffrey Brezinski (Tax #915348)

A Line of Duty Injury Report (enc. 23c) indicated that PO Michael Guida sustained spinal muscular injuries to his lower back as a result of struggling with § 87(2)(b). PO Guida also witnessed Lt. Brienza and PO O'Brien sustain injuries while assisting officers subdue § 87(2)(b) (enc. 23a-b). PO Carlos Naranjo and PO Jeffrey Brezinski witnessed injuries to Lt. Brienza, PO O'Brien, and PO Guida (enc. 26a-b and 29a-c).

PO Guida was interviewed on May 4, 2006 (enc. 24). He is a § 87(2)(b)-old white male who is 5'11, weighs 260 pounds, and has brown hair and blue eyes. His partner was PO O'Brien and they were assigned to sector CG patrol duty. When they arrived at the location, they spoke with a female complainant who was on the first floor. PO Guida secured the apartment while PO O'Brien spoke with the complainant. PO Guida did not speak to the complainant and did not hear the conversation between the complainant and PO O'Brien. During the conversation a call came over that backup was needed at another location, so PO O'Brien and PO Guida told the complainant that they would be back. When PO O'Brien and PO Guida were about to return to § 87(2)(b), PO Guida requested Lt. Jeffrey Brienza to accompany them because they needed to arrest § 87(2)(b).

PO Naranjo was interviewed on May 5, 2006 (enc. 27). He is a § 87(2)(b)-old Hispanic male who is 5'10", weighs 185 pounds, and has brown hair and brown eyes. According to his memo book entry for September 6, 2005, PO Naranjo was backing up Sector C at § 87(2)(b) at 12:30 a.m. At 2:15 a.m., he "escorted MOS to § 87(2)(b)." PO Naranjo's partner was PO Brezinski, who was interviewed on August 11, 2006 (enc. 30). He is a § 87(2)(b)-old white male who is 5'11," weighs 200 pounds, and has brown hair and hazel eyes. He wrote on the fly sheet of his memo book, "10-85 § 87(2)(b) male Hispanic resisting arrest" (enc. 28d).

PO Naranjo and PO Brezinski responded to a radio call involving a violation of an order of protection. When they arrived at § 87(2)(b), they met Lt. Jeffrey Brienza, PO Michael O'Brien, and PO Michael Guida in front of § 87(2)(b) on the § 87(2)(b) floor. Lt. Brienza was speaking with § 87(2)(b). Lt. Brienza was saying that § 87(2)(b) had violated an order of protection and that he needed to be arrested. After speaking for about five minutes, Lt. Brienza told the other officers that they needed to go in and arrest § 87(2)(b). § 87(2)(b) was visible behind § 87(2)(b). § 87(2)(b) was cursing at the officers and refused repeated instructions to come out. According to PO Brezinski, § 87(2)(b) said, "Fuck you, don't even think about coming into my apartment. You step foot inside and I'm going to kick you and four other cops' asses. You're going to get fucked up." PO Brezinski heard Lt. Brienza tell § 87(2)(b) that he threatened a woman downstairs "if you don't come with us and you kill her, then we'll all have problems." PO Brezinski and PO Naranjo were not present when the woman showed the officers the order of protection.

PO Guida remembered that § 87(2)(b) approached the officers and Lt. Brienza was able to reach across the threshold of the doorway and grab him. Lt. Brienza and PO O'Brien then entered the apartment, followed by the rest of the officers. § 87(2)(b)'s father stepped out of the way; however, § 87(2)(b) obstructed the officers' path. PO Guida verbally instructed § 87(2)(b) to step to the side and she complied. At no point did PO Guida see any officers push § 87(2)(b) and he did not see her on the ground.

PO Naranjo witnessed Lt. Brienza stick out his arm, place § 87(2)(b) by the wall, and enter the house. The other officers followed Lt. Brienza inside. PO Naranjo did not see § 87(2)(b) or § 87(2)(b) preventing the officers from going in. He said that none of the officers at the scene pushed § 87(2)(b) or § 87(2)(b) to the ground.

PO Brezinski stated that § 87(2)(b) attempted to close the door and Lt. Brienza put his foot inside the door. PO Brezinski saw Lt. Brienza open the door, at which time § 87(2)(b) ran further into the apartment. The officers followed Lt. Brienza inside. After entering the apartment, PO Brezinski saw § 87(2)(b) on the floor. She was holding her chest and she said she couldn't breathe.

PO Brezinski stopped to find out if she needed an ambulance. She stayed on the ground while the officers were in the apartment. PO Brezinski did not see how she got to the ground.

The officers engaged in a struggle with § 87(2)(b) who was swinging at the officers with closed fists. The officers were attempting to grab his arms but he resisted. PO Guida witnessed § 87(2)(b) charge PO O'Brien and slam him against a wall. During the struggle, § 87(2)(b) and several other officers fell on PO Guida's back, causing muscle damage. Eventually, § 87(2)(b) was handcuffed. PO Guida said he did not strike or punch § 87(2)(b) in order to subdue him and he did not see any other officers do so. PO Guida stated that PO Naranjo and PO Brezinski escorted § 87(2)(b) down the stairs. PO O'Brien asked § 87(2)(b) if he needed medical attention, but he refused.

When PO Brezinski came back to the apartment with EMS personnel, § 87(2)(b) slammed the door on him and said, "Fuck you, I don't need EMS."

None of the officers slammed § 87(2)(b) into a gate as they were removing him from the building. None of the officers said, "Don't fucking go anywhere," to § 87(2)(b) and nobody said they would enter the apartment by using force. The officers said they did not push § 87(2)(b) or § 87(2)(b). They did not recall if any officer punched or kicked § 87(2)(b). PO Brezinski did not remember if § 87(2)(b) had injuries. PO Brezinski did not see any officers punch or kick § 87(2)(b). Finally, the officers did not use profanity or called § 87(2)(b) a "spic."

Medical Records

§ 87(2)(b) was treated at § 87(2)(b) at 3:10 a.m. on September 6, 2006. The report documents that she had a bruise along her right forearm (enc. 34a). The final clinical impression states that she is suffering from generalized body pain and chest pain due to an alleged assault (enc. 34d).

Police Documents

There was a positive Sprint Print-out for this incident (enc. 35a-e). At 11:55 p.m. on September 5, 2006, a call was made from ANI-ALI § 87(2)(b) because of a violation of an order of protection. The caller's name is § 87(2)(b). The call back number is registered to § 87(2)(b) of § 87(2)(b). Officers from Sector C responded to the location at 12:05 a.m. A call for EMS was made at 12:57 a.m. § 87(2)(b) called at 1:01 a.m. to report that officers were trying to make an arrest and that they needed assistance.

PO O'Brien made an entry in the 94th Precinct Command Log on September 6, 2005 (enc. 37a) noting the arrest of § 87(2)(b) at 1:20 a.m. Under "physical/mental condition," PO O'Brien wrote, "appeared normal." A side note says that § 87(2)(b) was leg-shackled.

The 94th Precinct Roll Call for tour 1 on September 6, 2006 (enc. 38a-c) shows that Lt. Brienza was on-duty between 2300 hours and 0735 hours. PO Naranjo and PO Brezinski were assigned to patrol sector FH and PO O'Brien and PO Guida to sector CG.

Court Documents

The CCRB obtained copies of several orders of protection filed by § 87(2)(b) and § 87(2)(b) against § 87(2)(b) (enc. 39a-d). § 87(2)(b)'s order was valid through September 27, 2005 and it stated that the parties are subject to incidental contact as they live in the same building. § 87(2)(b)'s order was valid through March 30, 2006 and it also stated that the parties are allowed to have incidental contact.

Status of § 87(2)(b)'s Arrest Resulting From This Incident

The investigator determined that § 87(2)(b)'s arrest has been sealed.

Criminal Conviction History of § 87(2)(b) and § 87(2)(b)

§ 87(2)(b), § 87(2)(c)

A BADS search was conducted for § 87(2)(b) by using her social security number and the results were negative. Due to the common spelling of § 87(2)(b)'s name, the investigator was not able to determine his criminal conviction history.

CCRB History of Complainant and Victims (enc. 4-6)

The § 87(2)(b) family does not have a history of complaints with the CCRB. Previous cases involving men named § 87(2)(b) and § 87(2)(b) are unrelated.

Subject Officers' CCRB Histories (enc. 2-3)

Lt. Brienza and PO O'Brien have no substantiated cases in their histories.

Conclusions and Recommendations

Undisputed Facts

It is not in dispute that § 87(2)(b) and § 87(2)(b) have an order of protection against § 87(2)(b). § 87(2)(b) and Lt. Brienza agreed that Lt. Brienza entered the apartment and grabbed § 87(2)(b)'s shirt, which resulted in § 87(2)(b) fleeing into the apartment and being followed by the officers. During the struggle that happened inside of the apartment, § 87(2)(b) stated that the officers were attempting to grab his arms, a fact that the officers all agreed upon. PO O'Brien also stated that he struck § 87(2)(b) in the body with a closed fist at least once in an effort to make him comply. § 87(2)(b) admitted that he resisted the officers when he stated that he attempted to get the officers off of him.

When the officers entered the apartment, § 87(2)(b) alleged that PO O'Brien pushed her when he entered. PO O'Brien stated that he used force to "knock" § 87(2)(b) out of the way.

Disputed Facts

There is a dispute as to whether § 87(2)(b) violated an order of protection.

PO Guida, PO Naranjo, and PO Brezinski stated that they followed Lt. Brienza into the apartment, while PO O'Brien stated that he and his partner, PO Guida, made the decision to enter. Lt. Brienza stated that he made the decision to enter when he reached through the doorway to grab § 87(2)(b)'s shirt and subsequently follow him inside.

§ 87(2)(b) and § 87(2)(b) alleged that the officers pushed § 87(2)(b) out of the way when the officers entered the apartment. PO Naranjo stated that it was necessary for Lt. Brienza to "place" § 87(2)(b) against the wall without using force so that the officers were able to enter. Lt. Brienza did not recall if § 87(2)(b) was pushed. PO O'Brien and PO Guida denied using force against § 87(2)(b) and recalled that he stepped out of the officers' path.

§ 87(2)(b) denied resisting the officers as they entered the apartment. PO O'Brien stated that she pushed him and other officers and he had to "knock" her out of the way as a result. When he entered the apartment, Lt. Brienza stated that he may have "passed" § 87(2)(b) to PO O'Brien and he did not witness if force was used against § 87(2)(b) and § 87(2)(b). PO Guida remembered

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

Allegation A: PO Michael O'Brien spoke obscenely to § 87(2)(b)

PO O'Brien stated that he did not use profanity when speaking to members of the § 87(2)(b) family and none of the other officers stated that used profanity at the scene. § 87(2)(g)

Allegation B: Lt. Jeffrey Brienza authorized the entry of § 87(2)(b) Brooklyn, NY 11221.

§ 87(2)(g)

Based on the MOS statements, the point of entry occurred when Lt. Brienza reached inside the apartment and grabbed § 87(2)(b)'s shirt. § 87(2)(b) reacted by fleeing from the officer and running further into the apartment, which prompted Lt. Brienza and other officers to follow him. However, the investigation did not find that a warrant was issued for § 87(2)(b)'s arrest. Despite his detailed statement, Lt. Brienza did not say a warrant was ever obtained, and it is apparent from Lt. Brienza and PO O'Brien's testimonies that they immediately went to the § 87(2)(b) family's apartment after speaking with several civilians and viewing an order of protection filed against § 87(2)(b).

According to 2004 New York Search and Seizure Law, "the police must obtain a warrant to arrest a suspect in his home, even where the police have probable cause to make the arrest." § 87(2)(g)

Under the Emergency Doctrine, an officer can “enter a premises without a warrant to protect individuals in distress, to assist victims of crimes that have just occurred, or to investigate suspicious signs of impending danger (enc. 1d: Kamins ch. IV, sec. C, subsec. 2b).” § 87(2)(g)

The final exigency that may apply to this case is that of hot pursuit, in which the police are allowed “to enter a premises to search for suspect who has fled after committing a crime. The police must have probable cause to believe that the suspect has committed a crime and that he has fled to the specific premises (enc. 1g: Kamins ch. IV, sec. C, subsec. 2c).” § 87(2)(g)

Allegation C: Lt. Jeffrey Brienza authorized the use of physical force against § 87(2)(b)

§ 87(2)(b) alleged that he was pushed when the officers entered the apartment. Only PO Naranjo recalled that Lt. Brienza placed § 87(2)(b) against the wall, while Lt. Brienza and PO Brezinski did not see what happened to him. In addition, PO O’Brien and PO Guida witnessed § 87(2)(b) step out of the way of the officers. § 87(2)(g)

Allegation D: Lt. Jeffrey Brienza authorized the use of physical force against § 87(2)(b)

§ 87(2)(b) alleged that Lt. Brienza instructed PO O’Brien to push her. PO O’Brien testified that it was necessary to “knock” her out of the way because she was resisting the officers as they entered. It should also be noted that Lt. Brienza stated that when he entered, it was necessary to “pass off” § 87(2)(b) to another officer, most likely PO O’Brien. § 87(2)(g)

Allegation E: Lt. Jeffrey Brienza authorized the use of physical force against § 87(2)(b)

§ 87(2)(b) acknowledged that he was pushing away from the officers and trying to get them off of him when the officers attempted to handcuff him. § 87(2)(b)’s statement suggests that he was resisting the officers, and it is apparent that a significant struggle, documented in the Line of Duty paperwork, occurred between § 87(2)(b) and the officers. § 87(2)(g)

According to New York State Penal Law section 35.27, “a person may not use physical force to resist an arrest, whether authorized or

unauthorized, which is being effected or attempted by a police officer” (enc. 1h). § 87(2)(g)

Allegation F: An officer made remarks to § 87(2)(b) based upon ethnicity.

All of the officers interviewed stated that they did not use the word “spic” during their interaction with the § 87(2)(b) family. Furthermore, § 87(2)(b) stated that he did not see which officer called him a “spic.” § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: